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Defendant SHAKEY'S PIZZA ASIA
VENTURES, INC. and Third Party Defendants
CINCO CORPORATION, PC
INTERNATIONAL PTE LTD., and SPAVI
INTERNATIONAL USA, INC.

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

SHAKEY'S PIZZA ASIA VENTURES,
INC, a Philippines corporation,

Plaintiff,

v.

PCJV USA, LLC, a Delaware limited
liability company; PCI TRADING,
LLC, a Delaware limited liability
company; GUY KOREN, an individual;
POTATO CORNER LA GROUP, LLC,
a California limited liability company;
NKM CAPITAL GROUP, LLC, a
California limited liability company;
J & K AMERICANA, LLC, a California
limited liability company; J&K
LAKEWOOD, LLC, a California
limited liability company; J&K
VALLEY FAIR, LLC, a California
limited liability company; J & K
ONTARIO, LLC, a California limited
liability company; HLK MILPITAS,
LLC, a California, limited liability
company; GK CERRITOS, LLC, a
California, limited liability company;
J&K PC TRUCKS, LLC, a California

Case No. 2:24-CV-04546-SB(AGRx)

The Hon. Stanley Blumenfeld, Jr.

**JOINT STATEMENT
REGARDING FURTHER
CLARIFICATION OF CLAIMS IN
RESPONSE TO DKT. NO. 294**

Complaint Filed: May 31, 2024

Trial Date: September 12, 2025

limited liability company; and, GK CAPITAL GROUP, LLC, a California limited liability company and DOES 1 through 100, inclusive,

Defendants.

PCJV USA, LLC, a Delaware limited liability company; PCI TRADING LLC, a Delaware limited liability company; POTATO CORNER LA GROUP LLC, a California limited liability company; GK CAPITAL GROUP, LLC, a California limited liability company; NKM CAPITAL GROUP LLC, a California limited liability company; and GUY KOREN, an individual,

Counter-Claimants,

v.

SHAKEY'S PIZZA ASIA VENTURES, INC, a Philippines corporation,

Counter Defendant.

PCJV USA, LLC, a Delaware limited liability company; PCI TRADING LLC, a Delaware limited liability company; POTATO CORNER LA GROUP LLC, a California limited liability company; GK CAPITAL GROUP, LLC, a California limited liability company; NKM CAPITAL GROUP LLC, a California limited liability company; and GUY KOREN, an individual,

Third Party Plaintiffs,

v.

PC INTERNATIONAL PTE LTD., a Singapore business entity; SPAVI INTERNATIONAL USA, INC., a California corporation; CINCO CORPORATION, a Philippines corporation; and DOES 1 through 10, inclusive,

Third Party Defendants.

1 The Parties, after having met-and-conferred, jointly file this *Statement*
2 *Regarding Further Clarification of Claims In Response to Dkt. No. 294* pursuant to
3 the Court's order on September 5, 2025. Dkt. No. 294.

4
5 **I. PLAINTIFFS' FURTHER CLARIFICATION OF THEIR CLAIMS.**

6 Pursuant to the Court's Order at Dkt. No. 294, Plaintiff respectfully submits
7 the following statement in response to the Court's order on September 5, 2025. Dkt.
8 No. 294.

9 In the first two bullet points of this Court's Order from September 5, 2025
10 (Dkt. 294, pp.2-3), various questions are asked about the overlapping nature of
11 certain of Plaintiffs' claims, whether certain claims are duplicative, and specifics as
12 to which claim is being alleged by Plaintiff against whom. Plaintiff hopes that the
13 following not only answers those questions, but also to confirm that this Court's
14 request for narrowing of the disputes has not fallen on deaf ears.

15 At the outset, this case was and remains about a holdover licensee (PCJV
16 USA, LLC) that refused to accept that its license had been terminated on May 31,
17 2024. Instead, PCJV (operated and owned by named Defendants Guy Koren, GK
18 Capital, LLC; Potato Corner LA Group, LLC) and its "company owned" stores
19 comprising the remaining Defendants), continued to sell the French fries prepared
20 with the distinctive and proprietary Potato Corner seasonings, all of which was
21 emblazoned with, and sold under the banner of the three primary marks in the
22 Potato Corner portfolio: the logo mark, the word mark, and the slogan mark
23 primary marks "house mark."

24 As such, the use by PCJV (at the direction of its managers and officers) of
25 the house marks, continuously, from termination on May 31, 2024 to the present,
26 was the primary window within which Plaintiffs intended to, and will continue to
27 seek a monetary recovery (disgorgement) as well as, upon a finding of willfulness,
28 trebling of damages, and attorneys' fees. 15 U.S.C 1117(a)-(b). It is this core injury

1 that will also serve as the basis for the permanent injunction to be sought
2 subsequent to trial.

3 What Plaintriff did not expect were two events, each of which has shaped its
4 case ever since.

5 First, Plaintriff did not anticipate that Defendants would jettison their decade
6 long contractual assertions and public pronouncement that the seasonings are
7 indeed a trade secret, so as to give PCJV “cover” to compete against Potato Corner
8 using stolen information regarding the makeup of the seasonings. The fact that
9 Koren transferred the packages containing the proprietary trade secret seasonings to
10 a third party, when his license had terminated, is itself the wrongful act of
11 misappropriation. He should have relinquished access to the flavorings, and, most
12 certainly should not have used those flavorings to facilitate the development of his
13 new brand. The fruits of that misappropriation are the new flavorings used by
14 Undercover Fries (which advertises itself with the slogan “same flavor, new look.”

15 **This Court asks how each of the other Defendants (besides Koren**
16 **himself) are liable for misappropriation.** The answer is found in the California
17 Uniform Trade Secrets Act itself at Cal. Civ. Code § 3426.1(b), which defines
18 “misappropriation” to mean, acquisition, “disclosure or use” of a trade secret by
19 anyone who had reason to know of its improper acquisition. This implicates each of
20 the Defendants in different ways.

- 21 • Defendants Koren and PCJV, as well as the entities that operate PCJV
22 from a corporate governance standpoint (Potato Corner LA Group LLC
23 and GK Capital – the members of PCJV) are the acquirers. It was Koren,
24 on behalf of PCJV that obtained the packages, retained them without a
25 license, and gave them to a third party for reverse engineering.
- 26 • PCI Trading, LLC, is a discloser, as it is the supply chain arm that feeds
27 supplies to each of the stores. It is PCI Trading that receives the new
28 seasonings created as a result of reverse engineering. As Koren owns

1 PCIT, and operates it, that knowledge is imputed to the corporate entity.

- 2 • Each of the other Defendants own stores that have used the seasonings
3 sold by PCI Trading, and developed through use of misappropriation. In
4 doing so, each is a “user,” also liable under the CUTSA.

5 When Plaintiff included the trade secret misappropriation claim in its
6 Amended Complaint, the full effect of the reverse engineering had not yet been
7 revealed. By filing suit, immediately, Plaintiff’s diligence was coupled with an
8 awareness that things may change with respect to this claim, as the seasonings had
9 not yet penetrated the market.

10 The second event that Plaintriff did not expect was the decision by
11 Defendants to disregard this Court’s lengthy analysis of the factual and legal
12 defects in their defenses and claims. Plaintiff reasonably assumed that the analysis
13 and rulings would be taken to heart, and realized that the liability as to trademark
14 infringement will remain likely, unless they can uncover a new theory or new fact
15 that answers this Court’s analysis. It is this reason that Plaintiff – having already
16 provided the proof it needs for its claim, focused less on discovery (as this was now
17 just a damages case) and wait for Defendants’ initial disclosures which were going
18 to include the financial statements needed for damages. Instead, Plaintiff focused on
19 enforcement of the injunction, which proved to be an extensive, and consuming
20 endeavor. The injunction is particularly important to Plaintiff given that it is in the
21 process of developing the groundwork and foundation for its own proliferation and
22 marketing of the Potato Corner brand, and the insistence by Koren of offering
23 PCJV as the same brand, is toxic for Plaintiff’s efforts.

24 Nevertheless, Defendants, in addition to refusing to listen to this Court’s
25 analysis and adapt their case to it, simply ignored it. Their Counterclaims against
26 Plaintiff (and Third Party Claims against Cinco) depend upon and assume, this
27 Court (and the Ninth Circuit) were wrong on the law and facts. The claims are
28 nonsensical, and absurd, and exist only in a fact free world. Defendants take

1 positions contrary to the Lanham Act, and repeatedly ignored Plaintiff pointing out
2 the absence of probable cause behind each of them. Of course, this was filed less
3 than 30 days before the close of discovery. Nevertheless, given that the Court is
4 inclined to limit, severely, the scope of the trial before the jury, each of the Plaintiff
5 and Third Party Defendants are confident they have what they need to prosecute
6 their claims and defenses.¹

7 It is only now as the dust has settled from the having developed the
8 competitor “Undercover Fries” while operating as a Potato Corner, and using
9 Potato Corner’s proprietary and trade secret information to build that brand,
10 Plaintiff is now electing to proceed in the following way:

11 **First, Plaintiff has elected to forgo, and dismiss, without prejudice, its**
12 **claim for trade secret misappropriation arising from the packages of**
13 **seasonings that were reverse engineered.** Although the act of repudiation of trade
14 secrecy and theft of the trade secrets, will play a prominent role (as discussed
15 below), the damages unique to the trade secret theft, and not attributable otherwise
16 to the trademark infringement is not large enough to warrant the downsides this
17 Court has pointed out.

18 Second, Plaintiff instead will pursue the trademark infringement, and
19 separately, the false designation of origin claims. The former must focus solely on
20 the registered trademark (the primary marks in the Potato Corner portfolio),
21 whereas the latter, false designation, can include any registered or unregistered
22 mark (even one that is not protectable), and can include items that are not

23 ¹ Plaintiff understands this Court’s critique, however, with finite resources and
24 money, the focus on trying to force compliance while making sure that the body of
25 evidence already in Plaintiff’s hand was sufficient to prosecute its claim and
26 defenses (it was and is), was the proper way to spend its money on legal fees. Just
27 because Defendants continued to defend a case that they are doomed to lose (a
28 damages case), does not mean Plaintiff must move heaven and earth to further
prove their already proven claim. Moreover, given the avalanche of absurd ex
partes and motions and applications to the Supreme Court, and fatally flawed
discovery motions, was also costing Plaintiff substantial amounts in fees. In a world
of unlimited resources, it would also have engaged in a full throated discovery to
buttress the evidence it already has.

1 protectible under the Lanham Act such as procedures, processes, or, even
2 proprietary information and trade secrets. There is precedence for this claim, and
3 this distinction, as false designation of origin -distinct from trade dress and
4 trademark infringement – “is clearly actionable under § 1125(a).” *Int’l Ord. of Job’s*
5 *Daughters v. Lindeburg & Co.*, 633 F.2d 912, 916, n. 5 (9th Cir. 1980); *see also*
6 *JUUL Labs, Inc. v. Chou*, 557 F. Supp. 3d 1041, 1053–54 (C.D. Cal. 2021) (setting
7 forth a clean distinction between infringement and trademark infringement).

8 This Court’s implied request to dismiss the false designation theory is well
9 taken, but Plaintiff cannot agree for one specific reason: the Defendants’
10 affirmative defenses and counterclaims. Specifically, Defendants have alleged
11 outlandish affirmative defenses that the registrations are invalid, and the trademarks
12 abandoned. Although Plaintiff is confident it will prevail over Defendants’ nearly
13 impossible task of proving by clear and convincing evidence that naked licensing
14 occurred, or an assignment in gross,, however, in the off chance that the jury goes
15 sideways on those issues, false designation can still remain a theory of liability if a
16 claim that requires registered trademarks goes down.² Such a false designation
17 theory will place, prominently, the act of reverse engineering, the lack of authority,
18 the secrecy and clandestine nature of the adventure, and the use of those flavors to
19 claim to be Potato Corner. This is the most appropriate place to present the jury
20 with that aspect of the fact pattern – although it was indeed the theft of a trade
21 secret,

22 **Finally, this Court has asked Plaintiff to specify which of the Defendants**
23 **is also to be held liable for contributory or inducement of trade infringement.**

24 To answer this Court’s questions, it recites each question verbatim.

25 **Court: “Plaintiff shall clarify whether it wishes to pursue its inducement**
26

27 ² Plaintiff is curious about the abandonment theories proffered by Defendants,
28 given that, if abandonment is found no one can claim ownership of the marks; no
one can use them without fear of infringers. Perhaps the thought is if Koren and
PCJV cannot have Potato Corner, no one should.

1 **and contributory infringement theories at trial.”**

2 **Plaintiff’s Answer:** yes as to both.

3 **Court: “If so, Plaintiff shall identify (1) for purposes of its “inducing**
4 **infringement” instruction, which defendant is alleged to be the direct infringer**
5 **and which defendant(s) is alleged to have to have induced the direct infringer**
6 **to commit infringement.”**

7 **Plaintiff’s Answer:**

- 8 1. Direct Infringers (the stores): NKM Capital Group, LLC (owns
9 Santa Anita stores); J&K Americana, LLC (owns Americana
10 store); J&K Lakewood, LLC (owns a store in Lakewood); J&K
11 Valley Fair, LLC; J & K Ontario, LLC (owns a store in
12 Ontario); HLK Milpitas, LLC (owns a store in Milpitas); GK
13 Cerritos, LLC (owns a store in Cerritos); and J&K PC Trucks,
14 LLC, (owns the mobile food truck operation).
- 15 2. Inducers: PCJV and its owners, managers, and operators which
16 are PCJV, Potato Corner LA Group LLC and GK Capital, LLC
- 17 3. Note: As shown above, PCJV is both an inducer and an
18 infringer as it has stores of its own, and also induced its
19 sublicensees (the other Defendants) to engage in direct
20 infringement.
- 21 4. Note: Guy Koren is an inducer, but also the theories applicable
22 to managers and CEOs of infringers will also apply.

23 **Court: “If so, Plaintiff shall identify (2) for purposes of its “contributory**
24 **infringement” instruction, which defendant is alleged to be the direct infringer**
25 **and which defendant(s) is alleged to have sold goods or services to the direct**
26 **infringer.”**

- 27 1. Direct Infringers (the stores): NKM Capital Group, LLC (owns
28 Santa Anita stores); J&K Americana, LLC (owns Americana

store); J&K Lakewood, LLC (owns a store in Lakewood); J&K Valley Fair, LLC; J & K Ontario, LLC (owns a store in Ontario); HLK Milpitas, LLC (owns a store in Milpitas); GK Cerritos, LLC (owns a store in Cerritos); and J&K PC Trucks, LLC, (owns the mobile food truck operation).

2. Contributors: PCI Trading, LLC (the supply chain affiliate selling supplies to the infringers) and PCJV (selling franchise services in exchange for royalties and fees)

II. DEFENDANTS' FURTHER CLARIFICATION OF THEIR CLAIMS.

Pursuant to the Court's Order at Dkt. No. 294, Defendants respectfully submit the following report identifying their narrowed and focused claims. Defendants also look forward to conferring with the Court regarding an efficient path to bringing this matter to trial.

COUNTERCLAIM 8 – BREACH OF CONTRACT AGAINST CINCO/SPAVI

Defendants respectfully submit that the parties' written agreements provide the logical starting point for Defendants' portion of this report. Accordingly, the breaches of contract are addressed first and are set forth in two logically coherent sections.

Section 1: Breach of Vested, Property Right to Exclusively Possess, Use, Control, and Restrict the Transfer of the IP in the United States and Israel Under the LLC/JV Agreements

Initially, Defendants believe that it is essential that the Court—and, if/when so instructed, the Jury—understand that the IP was the foundational asset on which the joint venture partnership was formed. The foundational written agreements—the Joint Venture Agreement (governing the overarching joint venture) and the LLC Agreement (governing the LLC)—document, in part, a pre-existing joint venture

1 partnership that was “forged” between the two partnership groups following an
2 unlawful licensor-licensee relationship that never formed.

3 The foundational written agreements, the LLC Agreement at 4.17 and the
4 JVA at 3)g), included binding directives to the “Company” to “agree” to the terms
5 already negotiated by the joint venture partners. Those provisions focus on and the
6 burden of action (to “agree”) rested solely on the “Company”—not Cinco—and
7 was not conditioned on any further action by Cinco whatsoever. The use of “shall”
8 and “agrees” evidences a present and binding obligation on the Company’s part.
9 The Company’s mere agreement (a legal fiction it must carry—and did carry) is the
10 operative trigger. There is no language indicating that Cinco’s agreement is pending
11 or subject to further negotiation, or that execution by any party is required. The
12 documents do not say, for example, “subject to Cinco’s approval” or “upon mutual
13 agreement” or “conditioned on execution.” Instead, Cinco’s agreement is pre-
14 existing, presumed, and among the negotiated rights and obligations of the parties.

15 When measured against the evidence of the timeline of events and the
16 parties’ negotiations to restructure their relationship into a joint venture partnership,
17 including the actual drafts exchanged, and the parties’ performance before any joint
18 venture or LLC document was ever signed, it is readily apparent that Cinco already
19 had discharged its duty to contribute its IP to the joint venture partnership (which it
20 labeled a “master license”), in exchange for which it was to receive (and did
21 receive) a majority 60% interest in the “Company” once formed, among other
22 things. Plaintiff’s theory that these provisions are merely “agreements to agree” is
23 refuted by the plain language of the provisions themselves, the four corners of the
24 agreements, all the evidence surrounding the contracts, the parties’ actual
25 performance, and the parties’ under oath statements. There is not a single item in
26
27
28

1 the record corroborating Plaintiff's theory; every piece of evidence supports
2 Defendants' interpretation (the truth).³

3 The starting point for this claim is the LLC Agreement at 4.17-4.18 and the
4 JVA at 3)g)-3)h) which collectively evidence the parties' agreement to share
5 *equally* at all times in the economic benefits flowing from the IP (each group to
6 receive an equal share of "initial/franchise fees" and "continuing royalty fees" paid
7 to the "Company"). *See* Trial Exh. 1010 at 1.1.2-1.1.3; Trial Exhs. 62, 1050. That
8 co-equal IP economic-sharing agreement is a direct biproduct of a "grant" of a
9 "master license to use" the IP in the United States and Israel in exchange for which
10 Cinco Group received the majority 60% interest in the Company to be formed (and
11 4 of 7 manager votes). *See, e.g.*, Trial Exh. 1010 at 2.4; *see also* LLC Agreement at
12 4.3.1, JVA at 3)a). These provisions must be construed together alongside the other
13 companion written provisions and authorizations which, among other things:

- 14 A. authorize and require the Company to establish, operate, manage,
15 license and franchise "Potato Corner" stores/outlets (JVA at 1)a));
- 16 B. acknowledge rights and obligations "granted" and "vested" to each
17 group (LLC Agreement at 3.1);
- 18 C. bestow on the Company's President and the LA Group the right and
19 responsibility to control the IP (LLC Agreement at 4.11.7; JVA at 3)i);
20 MSA at 1 of "Services");
- 21 D. restrict assignments of any right or obligation without prior written
22 consent (LLC Agreement at 3.3 ["prior written consent" required to
23 assign rights or obligations in the LLC]; JVA at 2)d) [same as to the
24

25 _____
26 ³ Contract interpretation is a judicial function using rules of construction (including
27 discerning the mutual intent of the parties, considering the whole contracts, the
28 parties' actual performance, interpreting ambiguities against the drafter, and
applying a lawful, operative, definite, and reasonable interpretation of the contracts
rather than an interpretation that results in forfeiture). Defendants respectfully
submit that the Court's interpretation of the contracts may go a long way towards
eliminating issues at trial.

joint venture], MSA at 4 of “General Provisions”), coupled with
mutual rights of first refusal [*id.*];

E. make the granted and vested rights and obligations of indefinite duration—binding the parties to each other (as partners and fiduciaries) absent mutual agreement or 75% vote to dissolve the LLC and 75% vote to terminate the joint venture (LLC Agreement at 2.7, 3.7, 9.1; JVA at 4)a); MSA at 1 of “Duration of Agreement” [requiring mutual agreement to terminate or uncured breach]],⁴ which further mutual agreement or 75% vote to terminate the joint venture partnership and 75% vote to dissolve the LLC would expressly trigger the “trailing IP rights” provisions, further evidencing the Company’s vested and non-terminable right to use and the President’s and LA Group’s right and responsibility to control the IP (LLC Agreement at 9.2.1; JVA at 4)b)i));

F. require the parties to use best efforts to cooperate in the success of the Company and to perform any further acts as necessary to implement the intent of the parties (JVA at 5)b));

G. authorize PCJV to enter long-term, minimum 10-year franchise agreements with franchisees, under which agreements (originally drafted by Cinco) each franchisee is required to “acknowledge and agree that [the franchisee’s] use of the Marks and any goodwill established by that use are exclusively for our [PCJV’s] benefit ...”
See, e.g., Trial Exh. 1034 (2010 approved model Franchise Agreement, beginning at PDF p. 51 of 123, at Section 5 “Marks”); *see also, e.g.*,

⁴ It is noteworthy that when the parties left something up for “mutual agreement,” they explicitly said so. Nowhere in the “licensing provisions” in the LLC Agreement at 4.17 or the JVA at 3)g) did they require “mutual agreement.” Nor was further agreement required, as the parties already had agreed upon all material terms, including provisions regarding payment, term, and vesting the rights and responsibility to control the IP in the Company’s President and the LA Group.

1 executed Franchise Agreement by MAF Capital Group TX, LLC at
2 17.7 (Trial Exh. 1233) (“Franchisee acknowledges and agrees that the
3 rights to the Potato Corner Marks and the use of the Potato Corner
4 Marks shall be and remain the property of Franchisor”); and

5 H. Authorize the President and LA Group to reverse engineer seasonings
6 (“We also agreed that PCJV USA will start working with Newly Weds
7 spice company for the sourcing of the seasonings from their US plants
8 and the LA Group with negotiate on PCJVs behalf”) – Trial Exh.
9 1064.

10 Taken together, these provisions and authorizations (of which there are many more)
11 objectively establish that PCJV possessed all the hallmarks of a non-terminable,
12 non-transferable property right in the IP (e.g., possession, use, control).

13 By purportedly assigning or transferring (without authority or prior written
14 consent or a 75% vote) all or any portion of PCJV’s vested, property right to
15 exclusively possess, use, control, and restrict the transfer of the IP in the United
16 States and Israel, and in failing to honor those rights, the purported assignment or
17 transfer (whether or not invalid) constitutes a breach by Cinco (and SPAVI as its
18 successor⁵) of the LLC Agreement at 2.7, 3.1, 3.3, 3.7, 4.11.7, 4.17, 9.1, and 9.2.1
19 and the JVA (including its First Amendment) at 1)a), 2)d), 3)g), 3)i), 4)a), 4)b)i),
20 and 5)b), collectively.⁶

21 PCJV USA, LLC, PCI Trading LLC, Potato Corner LA Group LLC, GK
22 Capital Group, LLC, NKM Capital Group LLC, and Guy Koren (collectively, the
23 “PCJV Plaintiffs”) are suing Cinco and SPAVI for breach of the LLC agreement
24

25 ⁵ LLC Agreement at 12.8 binds successors and assigns.

26 ⁶ Each subject matter encompassed by the foregoing provisions also constitutes a
27 distinct and independent breach of contract under the specific clauses identified
28 above. Moreover, separate and apart from those breaches, the 50-year License
Agreement prepared, memorialized in the FDDs, and attested under penalty of
perjury by Cinco has likewise been breached.

1 and JVA (including its First Amendment) as set forth above. The PCJV Plaintiffs
2 have standing to bring the claim either as signatories, successors, owners, or
3 beneficiaries of the agreements. Should the Court, in consultation with
4 SPAVI/Cinco, determine that it is both prudent and efficient to do so, Defendants
5 consent to consolidating the claims under a single party, PCJV, provided that the
6 Jury is instructed that all claims have been assigned to, and will be prosecuted by,
7 PCJV solely as a procedural efficiency measure.⁷

8 **Section 2: Breach of SRA/MIPA**

9 Both the SRA and MIPA—Trial Exh. 1172—are binding on successors and
10 assigns. SRA at 12, MIPA at 8.06. Therefore, like the claims above, and whether by
11 virtue of contractual or legal successorship,⁸ these claims are asserted against Cinco
12 and SPAVI. Likewise, the same proposal made above regarding consolidating and
13 bringing the claims under a single party, PCJV, apply here as well, and to each
14 claim that follows.

15 As follows below, there are two distinct subject matter breaches of the
16 SRA/MIPA. First, by virtue of Cinco's and SPAVI's failure to honor releases and
17 waivers, they breached the SRA at 4.1 and 5 (read in context with Recital E).
18 Second, by virtue of Cinco's and SPAVI's failure to honor PCJV/PCI Trading's
19 100% ownership rights, interests, and control of the IP, they breached the MIPA at
20 1.01, 3.02, 3.03 (which must be read in context with SRA Recitals G and H).

21 **Breach of SRA at 4.1, 5 (Read in Conjunction with SRA Recital E)**

22
23
24 ⁷ On a meet and confer video conference call on September 9, 2025, Defendants'
25 counsel offered this proposal as to all claims asserted by Defendants. Plaintiff's
counsel is considering the proposal.

26 ⁸ The issue of whether SPAVI is a successor-in-interest to Cinco either by virtue of
27 law or contract coinciding with SPAVI's disavowal of stepping into Cinco's shoes
28 and inheriting contractual and fiduciary duties (estoppel), also appears to present a
complex set of legal issues, which may be ripe for the Court's consideration
following further briefing.

1 Recital E of the SRA identified “licensing” and “control” among the disputes
2 involved in the “Main Action.” At 4.1, each of the 21 “Cinco Parties” (inclusive of
3 their assigns and successors, as well as named parties owned, employed, or
4 affiliated with SPAVI, also including their assigns and successors) released all the
5 “Koren Releasees” of all claims, known or unknown, “related to or arising from
6 matters that were raised or that could have been raised in the Main Action” (which
7 undisputedly, per the SRA, involved “licensing”) and at 5, they waived the
8 provisions of California Civil Code Section 1542. By refusing to honor those broad
9 releases and waivers, Cinco (by assisting SPAVI) and SPAVI (by purportedly
10 “terminating”) breached those provisions.⁹

11 Breach of MIPA at 1.01, 3.02, 3.03 (Read in Conjunction with SRA Recitals G-H)

12 At SRA Recital G, Cinco represented that SPAVI did not acquire any
13 “ownership rights” in “PC International, Cinco, nor PCJV or PCI Trading.” At SRA
14 Recital H, the parties acknowledged that the MIPA constitutes a “complete
15 withdrawal by the Cinco Parties from any ownership or other interest in PCJV, PCI
16 Trading, or any other Koren Party.” Attendant to those representations, and among
17 other things, the MIPA:

- 18 1. At 1.01, memorializes a sale of all “Interests” and “rights attached to the
19 Interests” free and clear of any “Encumbrance” including any equitable
20 interest, restriction of any kind, restriction on use, or exercise of any other
21 “ownership attribute.”
- 22 2. At 3.02, solemnly confirms that the transaction will not require the
23 consent or license of a third party or violate or conflict with, or create in
24 any party the right to terminate a license, joint venture, or any other
25 arrangement, whether written or oral, or result in an “Encumbrance” (as
26 defined in 1.01).

27
28 ⁹ The only carve-out for Cinco from the broad general release and waiver was a narrow and limited declaratory relief claim by Cinco.

1 3. At 3.03, further represents and warrants that the Interests are free and
2 clear of all Encumbrances and are not subject to any agreement,
3 understandings, or other collaborative arrangements or understanding with
4 any other party.

5 By refusing to honor these provisions confirming that PCJV owns 100% of
6 all rights, interests, and control of the IP without an “Encumbrance,” Cinco (by
7 assisting SPAVI) and SPAVI (by purportedly “terminating” rights in the IP)
8 breached those provisions.

9 **COUNTERCLAIM 9 – BREACH OF THE IMPLIED COVENANT OF**
10 **GOOD FAITH AND FAIR DEALING AGAINST CINCO/SPAVI**

11 The next claim to address in logical sequence following the breach of
12 contract claim is the breach of the implied covenant of good faith and fair dealing.
13 This claim is simple: to the extent the Court does not interpret the express
14 provisions of the written agreements the way the PCJV Plaintiffs interpret them,
15 then the implied covenant of good faith and fair dealing serves as a backstop by
16 preventing parties from undermining the core purposes underlying those contracts
17 and protecting the PCJV Plaintiffs’ right to receive the “fruits of the bargain” they
18 made.

19 The implied covenant: (a) prohibits Cinco and SPAVI from taking unfair
20 advantage of any potential oversights or acting in a manner that was contrary to the
21 original intent of the deal; (b) ensures that when a contract gives one party broad
22 discretionary power (such as, if required, to execute a license agreement), that
23 power must be exercised reasonably and in good faith, not arbitrarily or
24 capriciously; (c) when a contract is silent on a particular issue, provides a legal
25 basis for courts to fill in the gaps to ensure that the parties’ reasonable expectations
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27
28

are met; (d) prevents any party from exploiting ambiguities for unfair gain; and (e) prevents any party from effectuating a forfeiture of rights or consideration.¹⁰

**COUNTERCLAIMS 2, 3, 4 AND 5 – INDUCING
BREACH/INTERFERENCE CLAIMS AGAINST SPAVI**

In Defendants’ view, the next logical claims in sequence are the inducing breach and interference claims. All of these claims stem from SPAVI’s alleged acquisition of superior IP rights. First, SPAVI induced Cinco’s or PCJV’s breach of and intentionally interfered with each of the contracts and their associated provisions identified in the breach of contract section above: LLC Agreement at 2.7, 3.1, 3.3, 3.7, 4.11.7, 4.17, 4.18, 9.1, and 9.2.1; JVA (including its First Amendment) at 1)a), 2)d), 3)g), 3)h), 3)i), 4)a), 4)b)i), and 5)b); MSA at 1 of “Services,” at 4 of “General Provisions,” and at 1 of “Duration of Agreement;” SRA at 4.1, 5; MIPA at 1.01, 3.02, 3.03; and the 50-year “License Agreement” as memorialized in PCJV’s FDDs. (Counterclaims 2 and 3.)

Second, SPAVI induced breaches of and intentionally interfered with PCJV’s franchise agreements with PCJV’s third party franchisees (approximately 19 of them who now claim to be doing business with SPAVI). Those breached/interfered with PCJV franchise agreements include provisions granting a long-term license to use the Potato Corner Marks under specified terms and conditions (at Sections 2, 3, and 9), fees and payments to be made to PCJV alongside other franchisee obligations (at Sections 4, 7, 8, 10, 15, and 17), each of which were breached or

¹⁰ The parties plainly agreed that there were no at-will termination rights. Even without indefinite or 50-year IP rights, Cinco could not cause PCJV to breach franchisee agreements and to lose contracts or rights to royalties. Because Cinco did not have at-will termination rights, whether due to expressed terms in their written agreements or the implied covenant of good faith and faith dealing, or otherwise, Cinco could not transfer at-will termination rights to SPAVI, especially in light of Cinco’s judicial admissions in the existing litigation between PCJV’s joint venture partners, which resulted in (i) PCJV’s President, Koren, winning control over and the continued responsibility to use of the IP and (ii) Cinco being enjoined from interfering with PCJV’s President’s operations of Potato Corner USA, including the exercise of his “perpetual” right and responsibility to control PCJV alongside PCJV’s use of the IP.

1 interfered with by virtue of SPAVI's conduct. These franchise agreements also
2 included an expectation of future economic benefits (e.g., renewals of license terms,
3 rebranding rights); therefore, they also are candidates for the prospective economic
4 relations claims. (Counterclaims 2, 3, 4 and 5.)

5 Third, SPAVI interfered with PCJV's supply chain agreements with its
6 vendors, including Bunzl, Shanghai Orientals, Lamb Weston, Ferna, and Newly
7 Weds, making performance more difficult, expensive, restrictive, or prohibitive all
8 together. The parties also expected future economic benefits for each of these
9 relationships, making them also candidates for the prospective economic relations
10 claims. (Counterclaims 3, 4, and 5.)

11 Fourth, SPAVI intentionally interfered with Defendants' lease agreements
12 with various commercial landlords making performance more expensive or difficult
13 by virtue of a compelled name change. But for SPAVI's tortious alleged acquisition
14 of IP rights, this harm does not occur. (Counterclaim 3.)

15 Fifth, SPAVI interfered with at least two active developments by Defendants
16 to open two new store locations in Northern California (and many more planned
17 across the country, inclusive of many with actual or prospective third party
18 franchisees), which were delayed or abandoned. (Counterclaim 3, 4, and 5.)

19 **COUNTERCLAIMS 7 AND 6 – BREACH OF FIDUCIARY DUTY**
20 **AGAINST CINCO/SPAVI, AND AIDING AND ABETTING AGAINST**
21 **SPAVI**

22 Well beyond any contractual duties (or duties arising from the implied
23 covenant of good faith and fair dealing), Cinco, as a joint venture partner, owed
24 fiduciary duties of loyalty, care, and good faith to the other joint venture partners, to
25 PCJV, and to PCJV's members. SPAVI, as Cinco's successor, is alleged to have
26 assumed these fiduciary obligations (which SPAVI denies acquiring). The breaches
27 against Cinco and SPAVI include: (a) acting in their own self-interest to the
28 detriment of PCJV and PCI Trading; (b) facilitating unauthorized transfers of

1 rights, interests, or control of the IP; (c) undermining PCJV and PCI Trading's
2 business and goodwill; (d) causing disruptions in PCJV's and PCI Trading's
3 relationships; and (e) attempting to do indirectly what they were prohibited from
4 doing directly (terminate PCJV's rights and interfere with Koren's rights and
5 responsibilities). (Counterclaim 7.)

6 SPAVI aided and abetted each of the foregoing breaches of fiduciary duty.
7 Additionally, SPAVI aided and abetted: (a) the conversion of PCJV's IP rights; and
8 (b) the "Cinco Parties'" fraud (intentional misrepresentations and concealments of
9 fact) in the SRA/MIPA as set forth above (if those representations were false,
10 misleading, or concealed). (Counterclaim 6.)

11 **COUNTERCLAIM 11 – QUANTUM MERUIT AGAINST ALL**
12 **COUNTERCLAIM DEFENDANTS**

13 This claim is pled in the alternative and is premised on the extent to which
14 Cinco or SPAVI (and their affiliated counterclaim defendant parties) requested,
15 accepted, and benefitted from services, efforts, or investments by Defendants (e.g.,
16 in establishing, developing, and growing the Potato Corner USA brand and
17 goodwill, along with a domestic franchise system, targeted franchisee selections
18 and locations, lucrative negotiated agreements, know-how, trade secret, proprietary
19 and/or confidential information, supply chain network, relationships, marketing,
20 advertising, etc.). Cinco and SPAVI have failed and refused to compensate
21 Defendants for the benefits requested and conferred after denying contractual
22 rights, fiduciary obligations—disavowing the joint venture partnership and
23 claiming that Defendants were mere at-will licensees. The PCJV Plaintiffs are
24 entitled to recover the reasonable value of the requested services to create a U.S.
25 brand and goodwill allegedly on behalf of Cinco and its successors. This alternative
26 claim is triggered if the Court finds that those services were not for PCJV's own
27 benefit, so as to avoid unjust enrichment.
28

1 The counterclaim defendants include Cinco and PC International PTE Ltd.,
2 both of which registered trademarks used, developed, and/or created by PCJV,
3 including their associated goodwill, and SPAVI and SPAVI International USA,
4 Inc., both of which co-opted (and, thus, accepted) the benefits of the franchise
5 system built by the PCJV Plaintiffs.¹¹

6
7 Dated: September 10, 2025

FOX ROTHSCHILD LLP

8
9 /s/ Michael D. Murphy

10 Michael D. Murphy
11 Attorneys for Plaintiff and Counterclaim
12 Defendant SHAKEY'S PIZZA ASIA
13 VENTURES, INC. and Third Party
Defendants CINCO CORPORATION,
PC INTERNATIONAL PTE LTD., and
SPAVI INTERNATIONAL USA, INC.

14 DATED: September 10, 2025 **BLANK ROME LLP**

15
16 By: /s/ Arash Beral

Todd M. Malynn

Arash Beral

Jamison T. Gilmore

18 Attorneys for Defendants, Counterclaimants,
19 and Third Party Plaintiffs PCJV USA, LLC,
20 PCI TRADING LLC, POTATO CORNER,
21 LA GROUP, LLC, GK CAPITAL GROUP,
22 LLC, NKM CAPITAL GROUP, LLC and
23 GUY KOREN, and Defendants J & K
AMERICANA, LLC, J&K LAKEWOOD,
24 LLC, J&K OAKRIDGE, LLC, J&K
25 VALLEY FAIR, LLC, J & K ONTARIO,
26 LLC, J&K PC TRUCKS, LLC, HLK
MILPITAS, LLC, and GK CERRITOS, LLC

27 ¹¹ Defendants submit that following the introduction of evidence and testimony of
28 Plaintiff's witnesses, including cross-examination, Defendants' claims may need to
be conformed to proof—whether expanded or reduced. For purposes of this report,
Defendants have cogently asserted their alleged claims as they view and know them
based on the evidence presently available, in as logical manner as possible.

ATTESTATION

Pursuant to Local Rule 5-4.3.4, the filer attests that all signatories listed, and on whose behalf the filing is submitted, concurs in the filing's content and have authorized the filing.

/s/ Michael Murphy
Michael Murphy

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CERTIFICATE OF SERVICE

The undersigned certifies that, on August 29, 2025, the foregoing document was electronically filed with the Clerk of the Court for the United States District Court, Central District of California, using the Court’s ECF filing system. I further certify that all counsel for all parties to this action are registered CM/ECF user and that service will be accomplished by the CM/ECF system.

I certify under penalty of perjury that the foregoing is true and correct.

Dated: September 10, 2025

FOX ROTHSCHILD LLP

/s/ Michael D. Murphy
Michael D. Murphy
Attorneys for Plaintiff and Counterclaim
Defendant SHAKEY’S PIZZA ASIA
VENTURES, INC. and Third-Party
Defendants CINCO CORPORATION,
PC INTERNATIONAL PTE LTD., and
SPAVI INTERNATIONAL USA, INC.